

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.376 OF 2022

IN
CRIMINAL APPEAL NO. _____/2022

Mr. Hemant Prabhakar Patil

Vs.

Mr. Nitesh s/o Keshavrao Onkar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Ayushi H. Dangre, Advocate for applicant.
Mr. A. S. Dhore, Advocate for non-applicant.

CORAM : AVINASH G. GHAROTE, J.

DATE : 20/07/2022

1. Heard Ms. Dangre, learned counsel for the applicant.
2. Leave is sought to file appeal against the judgment dated 22.3.2022 passed by the learned Special Court, Ralegaon, whereby in proceedings under Section 138 of the Negotiable Instruments Act, the accused has been acquitted of the said offence.
3. Ms. Dangre, learned counsel for the applicant submits that the only ground for acquitting as is spelt out from the impugned judgment is that the cheque was in the name of Kausalya Motors, Ralegaon, which is a proprietorship concern of the complainant Hemant Patil and the learned Special Court under misconception of law has dismissed the complaint on the ground that the complaint has been filed in the

individual name of the complainant and the proprietorship concern has not been added as a complainant.

4. Though, Mr. Dhore, learned counsel for the non-applicant supports the acquittal contending that since the cheque is in the name of the proprietorship concern, of which, the complainant was the proprietor, it was necessary for the proprietorship concern to have been added as a complainant.

3. In fact, there is no distinction between a proprietorship concern and its proprietor [See : ***Shankar Finance and Investments Vs. State of Andhra Pradesh and others 2008 (8) SCC 536 (para 10)*** which holds that a proprietary concern is nothing but an individual trading under a trade name and has to sue in his own name, though others can sue him in the trade name] considering which, a case for leave is made out.

4. Leave is accordingly granted. The office to register the appeal.

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1. Issue notice to the respondent for final disposal at the stage of admission, considering that a short point is involved, returnable on 01.08.2022.

(3)

10.appa.376.2022

2. Mr. Dhore, learned counsel waives service of notice for the respondent on merits.

3. Mr. Dhore, learned counsel for the respondent seeks leave to deposit the cheque amount of Rs. 50,000/- in this Court.

4. Leave is accordingly granted.

JUDGE

Sarkate